APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE TENTH DISTRICT

No. 74-1069

STATE OF NEW MEXICO
Co-Respondent,

v.

R. LEE AAMODT, ET AL.,
Co-Respondents

PUEBLO DE SAN ILDEFONSO
PUEBLO DE POJOAQUE
PUEBLO DE NAMBE
PUEBLO DE TESUQUE
PETITIONERS

AFFIDAVIT

Morris Thompson, being first duly sworn, deposes and says:

1. I am presently Commissioner of Indian Affairs of the United States Department of the Interior. I was appointed to this post by the President, confirmed by the United States Senate on December 3, 1973, and have served continuously since that date.

2. I have been informed that the Pueblos of Tesuque, Pojoaque, Nambe, and San Ildefonso are taking an appeal to the Tenth Circuit Court of Appeals from the Order of the District Court in *State of New Mexico* v. *Aamodt*, No. 6639—Civil (D.N.M.) entered on December 6, 1974, denying the private attorneys for such Pueblos the right to represent

them separately and independently from the attorneys for the United States and striking *sua sponte* a Complaint-in-Intervention filed by such Pueblos on November 12, 1974. I am giving this affidavit because I believe that these decisions interfere with important actions by the Bureau of Indian Affairs in fulfillment of the trust obligations of the United States to protect its Indian wards and their property, including water rights.

3. The issues raised by the *Aamodt* case concerning the water rights of the four Indian Pueblos have long been of concern to officials at the highest levels of the Department of the Interior. We believe that the ultimate decision by the courts in this case will have far-reaching consequences as a judicial precedent, affecting the other 15 New Mexico Pueblos and perhaps Indian tribes in other states.

4. Conflicts of interest often arise between the trust obligations of the United States and the programs and policies of various federal agencies. On the one hand, the United States has a strict fiduciary obligation to protect and preserve Indian rights to natural resources, including rights to land, water, minerals, timber and to hunt and fish. On the other hand, certain federal agencies are charged by statute with administering programs that conflict with Indian claims to these same natural resources. In this *Aamodt* case, for example, the United States Forset Service has assembled a claim to water in the same watershed involved in the litigation. Allegations have also been made that other federal agencies would profit from restricting the water rights claims of these four Pueblos. Irrespective of the ultimate validity of these allegations, I believe it is important for the United States to avoid even the appearance of a conflict of interest in a case of such far-reaching significance.

5. For the above reasons, the Bureau of Indian Affairs has in this instance, as in other similar cases, decided that

private counsel independent of any possible conflict of interest should be furnished to represent the Indian interests. The Bureau's Albuquerque Area Director approved a special attorney contract on March 28, 1974, pursuant to which the three attorneys could be funded to represent the Pueblos in the *Aamodt* litigation.

6. The Bureau of Indian Affairs has provided all funds for the services, disbursements, and expenses of these attorneys. It was contemplated that the private attorneys would cooperate with, but would be independent from, the Government's attorneys in the Department of Justice. Those were deliberate actions to fulfill the Government's trust obligations to the Pueblos.

7. The Order entered by the District Court of December 6, 1974, defeats the intention and actions of the Bureau of Indian Affairs—that the Government's trust responsibilities to the Pueblos in this case shall be discharged by providing private counsel of the Indians' choice to work in cooperation with, but independently from, the attorneys of the Department of Justice.

8. The decisions described above on behalf of the United States as trustee were made in the sound discretion of the Bureau of Indian Affairs under the legal mandate of Congress and the Courts to function as a trustee for the protection of Indian rights and property. They are, in my opinion, essential to the implementation of the trust obligations of the United States in this *Aamodt* case.

/s/ MORRIS THOMPSON
Morris Thompson
Commissioner of Indian Affairs

STATE OF NEW MEXICO
COUNTY OF BERNALILLO, : ss

The foregoing Affidavit was executed before me this 13th day of January, 1975 by MORRIS THOMPSON, Commissioner of Indian Affairs, Department of the Interior.

/s/ SANDRA GOZGI
[illegible]
Notary Public

My Commission Expires:
April 14, 1977